

## Internal Revenue Service

Number: **200934023**

Release Date: 8/21/2009

Index Number: 2632.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-147685-08

Date: APRIL 29, 2009

### Legend:

Donor A =

Donor B =

Trust =

Date 1 =

Date 2 =

Year =

\$a =

\$b =

Gift 1-A =

Gift 1-B =

Gift 2-A =

Gift 2-B =

Dear

This responds to your representative's letter of November 3, 2008, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocation of generation-skipping transfer (GST) exemption to a trust.

The information and representations state that, on Date 1, Donor A and Donor B, who are spouses, created the Trust for the benefit of their descendants. Donor A and Donor B each transferred \$a (i.e., Gift 1-A and Gift 1-B, respectively) to the Trust on Date 2. Donors relied on their professional advisors to prepare the returns reporting these gifts.

However, due to miscommunication among the advisors, no gift tax returns were filed.

In the following year, Year, Donor A and Donor B each transferred \$b (Gift 2-A and Gift 2-B, respectively) to the Trust. Each timely filed a gift tax return reporting the gift. However, no GST exemption was allocated to the gifts on the returns. The time for assessing the tax for these gifts has since expired.

Donor A and Donor B request an extension of time to allocate his or her GST exemption to his or her respective gifts made to Trust on Date 2 and in Year. They will each file a gift tax return reporting their respective gift to Trust on Date 2. In computing the gift tax to be paid for that gift, each will treat his or her gift made in Year as having been made prior to Date 2. That is, Donor A will treat Gift 2-A as made before Gift 1-A. Likewise, Donor B will treat Gift 2-B as made before Gift 1-B. In this way, the unified credit already applied against the tax on the gifts made in Year will be taken into account before any unified credit may be applied against the tax on the gifts made on Date 2.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a), in effect at the time of the transfer, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) B (A), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of

§ 2001(f)(2)), and (B) such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe the circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). The regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001. Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 or 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax

professional failed to make, or advise the taxpayer to make, the election.

With respect to Donor A's and Donor B's request for relief, based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Donor A is granted an extension of time of sixty (60) days from the date of this letter to allocate his available GST exemption to his gifts made on Date 2 and in Year. Likewise, Donor B is granted an extension of time of sixty (60) days from the date of this letter to allocate her available GST exemption to her gifts made on Date 2 and in Year. The allocations will be effective as of the date of each transfer. The allocations should be made on supplemental Forms 709 for each year in which there was a transfer and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes  
Copy of the letter